IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 398 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VISHVANATH KALUBHAI KRISTI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 398 of 1995

MS BANNA S DATTA for Petitioners No. 1-2

MR HH PATEL, APP for Respondent No. 1

CORAM : MR.JUSTICE K.R.VYAS
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 13/12/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE AKSHAY H.MEHTA)

1. Appellants have challenged, by filing this appeal u/S. 374 (2) of the Code of Criminal Procedure, the judgment and order of learned Sessions Judge, Surat dated 9/3/1995 delivered in Sessions Case No. 131/1994. Vide said judgment Ld. Judge had convicted the appellants for offence punishable u/S. 302 of the Indian Penal Code (for short 'IPC') and has sentenced them to suffer imprisonment for life. He has also convicted both the appellants for an offence punishable u/S. 498-A read with section 114 of the IPC and has sentenced them to suffer RI for two years and to pay a fine of Rs.500/- each, in default further RI for two months. Appellant no. 2 is also convicted by the Ld. Judge for an offence u/Ss. 323 and 504 of the IPC and has sentenced her to suffer RI for one month.

2. The facts leading to the present prosecution of the appellants stated in nutshell are as under :-

2.1. The deceased Bebiben, wife of Anil Vishvanath was residing with her husband and parents-in-law i.e. the present appellants in red road locality in the city of Surat. Her husband Anilbhai was working in Rina Dyeing factory, whereas appellant no. 1 was working in Jenil Silk and the mother-in-law i.e. appellant no. 2 was doing the work of cleaning utensils for others. The deceased was doing only the household work. Since the husband of the deceased was drawing meagre salary, the appellants always insisted that the deceased should also find out some work and earn some money. Though the deceased was ready for the same, her husband did not like this idea and he prevented her from doing any outside work. It appears that this issue gave rise to continuous quarrel between the appellants on one side and the deceased on the other. On account of this, the deceased was being harassed and mentally tortured by the appellants and whenever the deceased visited her parents she complained to them regarding the cruel behaviour of the appellants with her. She was always pacified by the parents and persuaded to go back to the matrimonial home and to take care of the things. It also appears that to reconcile with the situation she started going for work and cleaned the utensils of others. It she did for about two months. However, this was not liked by her husband and as a result of that, she had to discontinue the same. The appellants, therefore, again started torturing and taunting the deceased and caused her mental harassment.

2.2. On 6th March, 1994 the deceased got up at about

5.30 a.m. and cooked food for her husband, who was required to leave the house at about 7.00 a.m. for reporting on duty. On that day the appellants were at home since appellant no. 1 who usually went to the mill at about 8.00 a.m. did not go for the job on that day. In the morning round about 8 O'clock appellant no. 2 again started quarrelling with the deceased and gave her filthy abuses. When deceased asked appellant no. 2 not to speak abuses, appellant no. 2 got enraged and gave 2 to 4 slaps to the deceased. Deceased at that time was in the kitchen. In the meantime appellant no. 1 also arrived there and started scolding the deceased that why she was confronting the mother-in-law i.e. appellant no.2 and so saying he immediately poured kerosene over her from a container already lying in the kitchen. Appellant no. 2 immediately brought a match box and lighted a match stick and set fire to clothes of the deceased. As a result of this, deceased started burning and as if that was not enough, appellants pushed her towards lavatory with an intention to confine her in the lavatory. In the process appellant no. 1 received some burn injuries on the hand.

2.3. The parents of the deceased were informed about the incident by some lady at about 8.30 a.m. and, therefore, the parents as well as the brother and sister-in-law of the deceased went running to the house of deceased. When they reached there they found that appellants were not present in the house, but they were standing outside with their son. The deceased was lying on the floor near the lavatory. Parents therefore, immediately took steps to remove her to the hospital with the help of husband of the deceased. She was admitted to Maskati Hospital, Surat at about 8.30 a.m. where she was admitted into emergency ward. Before the Medical Officer attending to her, she revealed the history of the incident and informed her in what manner she came to receive the burn injuries. It appears that simultaneously appellant no. 1 was also admitted in the hospital for treatment.

2.4. The Police Head Constable at Chowk Bazar Police Station received message from Maskati Hospital at about 10.15 a.m. informing him about the admission of two patients having received burn injuries. He, therefore, made a note about the same in the register and entered it into the police station diary as Janvajog entry. The Head Constable Babanbhai Parshoram, who received the message from the hospital, in turn informed the P.S.I. then attached to Chowk Bazar Police Station, who on receiving the information, went to the hospital and

contacted injured Bebiben i.e. deceased of this case and upon making inquiry she narrated the entire incident and the same was reduced into writing as a complaint of Bebiben by the P.S.I. Considering the nature of the overt acts offence against the appellants came to be registered for committing offences u/Ss. 307, 498-A, 504, 323 and 114 of the IPC. After registering the offence usual investigation was commenced, during which the appellants came to be arrested, statements of various persons acquainted with the facts of the case were recorded, necessary panchnamas were drawn and the medical evidence in the form of post mortem notes, etc. was obtained. On conclusion of the investigation, chargesheet was submitted in the Court of Ld. J.M.F.C. Surat, who in turn committed the case to the Court of Sessions as offence u/S. 302 of the IPC is exclusively triable by the Court of Sessions.

3. At the trial, the Ld. Sessions Judge framed the charge at Exh. 3 for aforesaid offences and explained the contents thereof to the appellants who denied the same and claimed to be tried.

4. The prosecution in support of its case examined (1) Dr. Mahmed Ikbal Qureshi P.W. 1 Exh.8, (2) Nilkanthbhai Uvajibhai Gamit P.W.2 Exh. 12, (3) Dr. Minalben Madhusudan Joshi P.W.3 Exh. 16, (4) Vatsalaben Sukhlal Dagdu P.W.4 Exh. 18, (5) Sukhlal Dagdu P.W.5 Exh. 19, (6) Sukhadubhai Galubhai P.W. 6 Exh. 22, (7) Dr. Pratibhaben Kedarnath Trivedi P.W.7 Exh.26, (8) Babanbhai Parshuram P.W.8 Exh. 29, and (9) Bharatsinh Sidibhai P.W. 9 Exh.33. Over and above this, the prosecution also relied on documentary evidence such as the complaint of the deceased, the dying declaration Exh. 15, post mortem notes Exh.9, panchnama of the scene of offence Exh. 23, inquest panchnama Exh. 24, etc. After completion of the recording of oral evidence further statements of the appellants were recorded in accordance with the provisions of Section 313 of the Code of Criminal Procedure and they were explained all the circumstances appearing in the evidence against them with a view to render any explanation, if they so desired. In response to the same, both the appellants denied the case of the prosecution. So far appellant no. 1 is concerned, in reply to the last question whether he wished to say anything more, he stated that whenever they went for attending the job the deceased used to leave the house unattended and she used to go to her parents. She was, therefore, told by the appellant no. 1 that she should not go to her parents daily and she should not leave the house unattended, as the household articles may

get stolen. On this issue the deceased picked up a quarrel with them and went inside the house, while appellant no. 1 sat outside the house. Shortly thereafter he heard shouts of the deceased from inside and, therefore, he went inside the house. He tried to extinguish the fire and in the process he received burns on his body. He has further stated that stove was rolling on the floor. According to him, his son took him and Bebiben to the hospital for treatment. He has further stated that mother of Bebiben alleged that it was he who had burnt Bebiben and the appellant no. 1 told her that he had done so (However, looking to the entire answer and in particular the last portion of this answer, it appears that while recording this portion of the answer some mistake has been committed in as much as what appellant no. 1 had meant was that he had not burnt Bebiben, but the mother was levelling false accusation against him. Lastly he has stated that he was innocent. So far appellant no. 2 is concerned, she has stated that at the time of incident she was not present in the house and she did not know anything about the incident. According to him, she had never caused any harassment to the deceased and that she had been falsely implicated in this case.

5. At the end of the trial the Ld. Sessions Judge came to the conclusion that considering the oral evidence and other material on record, the prosecution has been able to prove beyond reasonable doubt that on 6th March, 1994 in the morning about 8 O'clock the appellant no. 1 had poured kerosene over the deceased and ignited her and caused her death by burning her alive. The Ld. Judge further came to the conclusion that the deceased was being constantly harassed physically and tortured mentally on the ground that she should get employment and earn money. Ld. Judge also came to the conclusion that on the day of the incident appellant no. 2 had abused the deceased and had also committed physical assault on her. In light of these findings the Ld. Judge convicted the appellants for offences stated above and awarded sentence of imprisonment for life.

6. Ms. Banna Datta, Ld. counsel for the appellants has taken us through the entire record of the case and has submitted that the prosecution has not been able to prove guilt of the appellants beyond reasonable doubt and, therefore, their conviction for offences alleged against them is not proper and legal. She has further stated that looking to the circumstances of the case the possibility of deceased having committed suicide cannot be ruled out. Lastly she has submitted that the present

appeal deserves to be allowed and order of conviction and sentence is required to be quashed and set aside. As against that, Mr. H.H. Patel, Ld. APP appearing for the State, has submitted that looking to the nature of evidence and in particular the dying declaration of the deceased it is conclusively proved that the appellants were responsible for causing the death of Bebiben by burning her alive and that before she was finally done to death, she was mentally and physically tortured by the appellants and hence the conviction of the appellants recorded by the Ld. Sessions Judge is proper and the appeal deserves to be dismissed.

7. We have perused the entire record of the case minutely and have appreciated the evidence afresh. At first instance we may focus our attention on the issue whether the deceased died unnatural death. The prosecution with a view to establish this fact has led and relied on the medical evidence of Dr. Pratimaben Kedarnath Trivedi P.W.7 Exh. 26. She has stated in her evidence that on 6/3/1994 (though date is wrongly shown as 6/4/1993) she was attached to Maskati Hospital, Surat as Medical Officer and she was on duty on that day from 8.00 a.m. to 2.00 p.m. On that day she was assigned duty in emergency ward. At about 9.30 a.m. Bebiben was brought to the emergency ward and at that time she was conscious. On inquiry she revealed to the witness that her father-in-law had poured kerosene over her and her mother-in-law had ignited her by lighting a match stick. This fact was noted down as history of the case in the case papers. The case papers have been produced alongwith list at Exh. 27. The bunch of case papers contained 9 documents describing the condition of the patient, the treatment given to the patient, cause of death, etc. In the cross-examination by the defence she has stated that before commencing the treatment the patient was asked about the history of the incident. She has further stated that during treatment she had directed certain injections to be given, which were given immediately according to her advice. She has further stated that the patient had received burn injuries on legs, both the hands, chest, stomach and on the back. Her hair were partially burnt and there was swelling on the skull. The skin had come off from various parts of body. The clothes were completely burnt and some washing powder was also sprinkled over the chest region. According to her, when she examined the patient, she was completely conscious and well oriented and this appeared from the conversation with her.

7.1. The prosecution has also examined Dr. Mahmed

Ikbal Qureshi P.W.1 Exh.8 and he has stated in evidence that on 8th March, 1994 while he was on his duty Police Constable Abhabhai Trambakbhai of Chowk Bazar Police Station had brought dead body of a woman whose name was Bebiben Anilbhai. He and Dr. Eliyas Shaikh in panel commenced the post mortem examination at 11.10 a.m. and completed the same at about 12.30 p.m. According to this witness, the deceased had sustained superficial and deep burns all over the body except an area between costal margin and one inch above the limbolions. He had further noted peeling of skin over solves and palms harden 98% area affected. According to him, the probable cause of death was shown due to superficial and deep burns. In support of his evidence, he has also produced the report of autopsy at Exh.9. In the cross-examination he has agreed to the suggestion put by the defence that a patient could sustain such injuries either in case of accident or suicide. He has further stated that it was true that if a person is burnt alive, soot particles would be found in the wind pipe as well as lungs. In the present case no such noting has been made as such particles may not be found as the death has occurred 2 to 3 days after the incident. He has also stated that the tongue of the deceased was not burnt.

7.2. Looking to the evidence of both the aforesaid witnesses, it becomes very clear that deceased Bebiben had suffered superficial and deep burns all over her body and these burns were anti mortem. It also becomes very clear that the body was burnt to the extent of 98%. In the opinion of Dr. Mahmed Ikbal Qureshi these injuries were sufficient in ordinary course of nature to cause death. He has also opined that the cause of death was shock due to superficial and deep burns. Over and above this medical evidence, there is inquest panchnama of the dead body, which also shows that the deceased Bebiben had received extensive burns all over the body which could have resulted in her death. We have, therefore, no hesitation in holding that deceased Bebiben had died on account of the burn injuries and it was not a natural death.

8. The next question what would require consideration is whether the death was homicidal and if yes, who was responsible for causing it.

8.1. To establish this fact, the prosecution has examined several witnesses and it has also relied upon certain documentary evidence. Vatsalaben Sukhlal Dagdu P.W. 4 Exh. 18 is the mother of deceased Bebiben. She has stated in her evidence that the marriage of the

deceased had taken place with Anil in the year 1991 and the names of her parents-in-law were Vishvanath and Sumanben. She identifies in the Court room both Vishvanath and Sumanben, the accused of the case and appellants of this appeal, as the parents-in-law of Bebiben. She has further stated that though Anil was doing service he was drawing very meagre salary. The appellants, therefore, constantly tortured the deceased to do some job and earn money. However, her husband did not like this. On account of this issue very often the quarrel took place in the house. According to this witness, whenever Bebiben visited her she complained about the harassment and torture caused to her by the appellants. However, she used to pacify her and persuaded her to go to matrimonial home. According to this witness, on the day of incident in the morning at about 6 O'clock some lady came and informed her that her daughter had received burns and hence she, her husband and her son and daughter-in-law went running to the house of Bebiben. When they reached there, they found that no body were present in the house. Only Bebiben was lying on the floor near lavatory. She did not ask anything to Bebiben and Bebiben also did not tell her anything. However, when she was brought to the hospital, she had narrated the complete details of the incident to the doctor. She has further stated that Bebiben said that her father-in-law had poured kerosene over her and that her mother-in-law ignited her by lighting a match stick. She was then admitted in the hospital and remained there till she expired. In the cross-examination by the defence she has stated that she did not know who was the lady who informed her about the incident. She has further stated that she was having tea while her son and his wife were sleeping inside the house in the back room. She has admitted that her daughter off and on used to go to stay with them. She has denied the suggestion made by the defence that her daughter used to tell her that she wanted to live separate, but her husband was not agreeing to that. She has also denied that Bebiben was not able to speak anything.

8.2. The second witness is Sukhlal Dagdu P.W. 5 Exh. 19, who happened to be the father of deceased. He has also deposed on the line of the evidence given by Vatsalaben. However, the Ld. APP appearing at the trial for prosecution sought permission of the Court to refresh memory of the witness without declaring hostile and the said permission was duly granted by the Court and in response to the question thereafter put by the Ld. APP he has stated that when his wife asked his daughter why she had received burns and she has stated that her

father-in-law had poured kerosene over her and her mother-in-law had set fire to her. He has further stated that about 11 months prior to the date of his giving evidence before the Court his daughter was burnt alive. In the cross-examination by the defence he has stated that when they received the news about the Bebiben, they were having tea. He has further stated that only because of the lapse of time he had forgotten the details of the incident and if the Ld. APP would not have drawn his attention to this fact, he could not have remembered the same. Nothing further has been asked to this witness by the defence.

8.3. Nilkanthbhai Gamit P.W. 2 Exh. 12 is the Executive Magistrate, who had received the Yadi for requesting him to record the dying declaration of the deceased, who then was admitted to the hospital on 6th March, 1994. The information was received at 11 O'clock by this witness and at about 11.15 O'clock he reached to the hospital and after finding out the patient, he went to her and started recording her dying declaration . In the Yadi which was received by him, endorsement was made by the doctor that the patient was conscious. This witness has stated that when he went to the patient, he revealed his identity and he informed her that he had been there to record her statement. So saying he started recording her statement. He first asked the patient her name and in reply the patient said Bebiben and also informed that she was wife of Anil Vishvanath. She was then asked what was her age and she stated it to be 20 years. She was asked where she was residing and she said Laxminagar. The next question that was asked to her was what occupation she was doing and in reply she said that nothing. She further informed him that she was not doing any occupation. This witness thereafter put a specific question to her as to what had happened to her and she stated that she was burnt. She further stated that she was burnt by her father-in-law and mother-in-law. On being asked how it happened, she replied that her father-in-law poured kerosene over her and burnt her. She was further asked as to who were present at the time of incident and she replied that her father-in-law and mother-in-law were present. The witness thereafter asked her where she was at present and she replied that she was in the Maskati Hospital. She was further asked as to who else were staying with her in the house and she replied that her father-in-law, her mother-in-law and her husband were staying with her. This witness has further asked her whether she had any quarrel with any body and in reply she said that there was a quarrel between her and her parents-in-law. To the last question whether she

desires to say anything more, she gave reply that she did not have anything more to say. According to this witness, the entire dying declaration was read over to her and she approved of it and for that she also put her thumb impression on the dying declaration in the presence of the witnesses. The dying declaration has been produced by the witness at Exh. 15. In the cross-examination by defence, this witness has stated that when he went to the patient, her relatives were present. However, he did not make any inquiry from them regarding their names and their relations with the patient. No officer of the hospital was present nor was the doctor present there. He has further stated that he did not meet the doctor before recording the dying declaration declaration declaration. He has also stated that the patient was not examined by the Medical Officer in his presence. He has further stated that though her body was covered, she could take out her hand or leg from the cover. He has further stated that before recording the dying declaration he had asked the relatives of the deceased to leave the place and to remain at distance.

8.4. The Investigating Officer Bharatsinh Sidibhai has been examined at Exh. 33 as P.W. 9. He has stated that on receipt of the information from the hospital, the P.S.O. informed him about the incident and he therefore, proceeded to Maskati Hospital and contacted Bebiben and recorded her complaint. He has stated that Bebiben was fully conscious when he went there and she was able to speak though she had received burns all over the body. She had given the complaint against the present appellants, which revealed that they had committed offence u/Ss. 307, 498-A, 504, 323 and 114 of the IPC. He thereafter forwarded the same to the police station for registering offence against the appellants and in the complaint thumb impression of Bebiben was obtained. The complaint has been produced at Exh. 34 on the record of the case. According to this witness, Bebiben has stated in the complaint that her father-in-law and mother-in-law were off and on taunting and causing harassment and on the day of incident in the morning they had quarrel with her saying that why she had not gone for doing any work. When Bebiben asked her mother-in-law not to speak abuses, she slapped her and thereafter her father-in-law poured kerosene over her and her mother-in-law set fire to her by igniting a match stick. In the cross-examination this witness has denied that he has first prepared the complaint and thereafter has gone to the complainant and had only got her thumb impression on the complaint by lifting her hand. Nothing of any consequence has been elicited in the cross-examination of this witness.

9. The entire evidence stated above shows certain glaring facts which are that the deceased Bebiben was married to Anilbhai and she was staying with her husband and parents-in-law, that Anilbhai was doing job, but was getting a very meagre salary, that on account of the meagre salary of Anilbhai the appellants constantly nagged the deceased to find out job and earn money, that this idea was not liked by her husband and he prevented her from doing so, that at one point of time the deceased has started working of cleaning utensils of others, but she had to discontinue the same because her husband prevented her from doing so, that again harassment from the appellants started and on the day of incident the parents-in-law started quarreling with her early in the morning at about 8 O'clock and appellant no. 2 started giving filthy abuses to her, that when the Bebiben, the deceased, asked appellant no. 2 not to speak abuses, she got enraged and gave 2 to 3 slaps to her and at that time her father-in-law - appellant no. 1 arrived there in the kitchen, that the appellant no. 1 took side of the appellant no. 2 and he told the deceased how could she challenge her mother-in-law and so saying he took up a container which was already there in the kitchen and poured kerosene from it on the body of Bebiben, that appellant no. 2 picked up a match box and lighted a match stick and ignited the clothes of the deceased, as a result of which she started burning and received extensive burns, that the parents of Bebiben were immediately informed by some unknown lady who came there running and the husband of the deceased and they managed to take her to the Maskati Hospital where she was admitted in the emergency ward. These factors clearly show that it was the appellants and the appellants alone who were responsible for causing the burn injuries to Bebiben. We may say that though there is no direct evidence to this effect, there is the dying declaration given by the deceased before the Executive Magistrate, in which in no uncertain terms she stated that the appellants were the author of the crime. Not only that but at the earlier stage before the Medical officer she has given the same history and later on before the Investigating Officer also she has stuck to the same version. That apart, she has also stated these facts to her parents while they were at the hospital. The dying declaration appears to have been recorded while the patient was in her full senses and was able to remember the things very clearly and was in state of giving full details of the incident. It also appears that the dying declaration is not a tainted one. Over and above that, the dying declaration is also corroborated by the

evidence of Dr. Minalben as well as that of the parents of the deceased and also the Investigating Officer. It has been held time and again by the Apex Court that if no infirmity is found, the dying declaration can be the sole basis for conviction. In the instant case, we clearly find that the dying declaration alone is sufficient to enable us to come to the conclusion that it was the appellants who had committed this crime. We, therefore, have no hesitation to hold that the death of Bebiben was homicidal one and that the appellants were responsible for committing it.

9.1. Obviously the evidence discussed above cannot lead us to any other conclusion but to one and only one conclusion that the appellants with the intention of causing the death of Bebiben had poured kerosene over her and had thereafter burnt her alive. Therefore, the offence that has been committed by the appellants cannot be anything less than the one u/S. 302 of the IPC. In our opinion, the trial Court has therefore, not committed any error in convicting the appellants for the said offence. We have also come to the conclusion that the material produced by the prosecution on record shows that the deceased was constantly being nagged and harassed by the appellants for not doing any work and thereby to earn more money and because of this cruel behaviour they have committed offence u/S. 498-A of the IPC.

10. The prosecution has also produced evidence to show that appellant no. 2 had slapped the deceased on the day of incident during the course of quarrel and had also abused her. She is therefore rightly convicted for offence u/S. 323 of the IPC by the trial Court.

11. Apart from this, looking to the false explanation submitted by appellants to the effect that appellant no. 1 had received burns while he was handling the stove, the record shows that this was not true at all and in fact he had received burns while he was trying to push the deceased while she was burning, in the lavatory with a view to close her inside the lavatory. Further the explanation given in the statement u/S. 313 also does not appear to be true in light of the evidence which has been led by the prosecution in this case. It has been a well settled principle of law by now that when all the circumstances are amply proved by the prosecution, a falsity of defence of the accused can also be an additional ground for basing the conviction. In the instant case, this principle squarely applies. In the result, we find that the judgment and order of conviction and sentence recorded by the trial Court is absolutely

just, proper and legal and does not call for any interference from this Court. The appeal does not have any merit and, therefore, it deserves to be dismissed and it is hereby ordered to be dismissed.

12. At this juncture our attention has been drawn to the Misc. Criminal Application No. 8989 of 2001 filed by appellant no. 1 praying for releasing him on bail pending final disposal of the present appeal and in that application in para. 5 he has made a statement that his wife i.e. appellant no. 2 has been released on bail by this Court on 11/12/2000 by passing order in Criminal Misc. Application No. 6726 of 2000. The appellant no. 2 therefore, obviously to be on bail as on today. With the dismissal of this appeal, we direct that she should surrender to the custody forthwith and her bail bonds stands cancelled with immediate effect.

[K.R. VYAS, J.]

[AKSHAY H. MEHTA, J.]

* Pansala.